

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Lisa Biron

v.

Case No. 16-cv-108-PB

United States of America

O R D E R

I construe petitioner's November 1, 2017 letter (doc. no. 11) as a request for relief under Fed. R. Civ. P. 60(b). Her principal argument appears to be that her section 2255 counsel overlooked evidence and arguments that counsel should have presented as a part of her 28 U.S.C. § 2255 petition. The Supreme Court has held with respect to such motions that "petitioners cannot circumvent the statutory certification requirements applicable to second-or-successive applications by filing pleadings that are labeled as motions under Rule 60(b), but are habeas corpus petitions in substance." United States v. Baker, 718 F.3d 1204, 1208 (10th Cir. 2013) (citing Gonzalez v. Crosby, 545 U.S. 524, 531-32 (2005)). Petitioner's letter is in substance a request for § 2255 relief based on arguments and evidence that § 2255 counsel neglected to present in connection with the original petition. Such arguments are subject to the successive petition restrictions contained in 28 U.S.C. 2255(h).

See Gonzalez, 534 U.S. at 530-31; Baker, 718 F.3d at 1208.

Accordingly, I deny petitioner's motion without prejudice to her right to refile her successive petition if she is able to obtain a certification to proceed from the court of appeals.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

November 27, 2017

cc: Lisa Biron  
Charles J. Keefe, Esq.  
Seth Aframe, Esq.